FISCAL NOTE

Bill #:	SB0215	**Title:**	Fees for use of state right-of-way
Primary Sponsor:	Toole, K	**Status:**	As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
State Special Revenue	$11,121	$11,121
Revenue:		
State Special Revenue Highways	$750,000	$750,000
State Special Revenue Schools	($5,000)	($5,000)
School Trust Revenue	($72,000)	($72,000)
Net Impact on General Fund Balance:	($5,000)	($5,000)

☒ Significant Local Gov. Impact
☐ Included in the Executive Budget
☐ Dedicated Revenue Form Attached
☒ Technical Concerns
☐ Significant Long-Term Impacts
☒ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Department of Natural Resources and Conservation

1. The department processes an average of 75 utility easement applications annually across state trust lands with revenues of $80,000 on average generated for the permanent trust funds. Sixty-seven (or 90 percent) of these application requests on state trust lands are for the construction of new lines within previously established utility right-of-way easement corridors held by various utility entities. Approximately $72,000 (90% x $80,000) is generated from these types of requests.
2. The proposed legislation would preclude the department from collecting fair market value and just compensation to the trust beneficiaries for new right-of-way corridor easements on state trust lands that exceed an appraised value of $5,000 under the $1 per lineal foot cap.
3. The trust funds earn interest at about 7 percent per annum, resulting in a loss of about $5,000 each year, depending on timing of collections, to the schools interest and income account, which is comparable to general fund.

Department of Transportation

4. Approximately 36,000 miles (190,080,000 feet) of utility lines run through Department of Transportation (DOT) right-of-way.

5. An average of one million feet of utility lines are installed each year. DOT owns in fee approximately 75 percent of its right-of-way. Therefore, the department would receive approximately $750,000 revenue each year. (1,000,000 feet x $1 per foot x 75 percent = $750,000)
6. Approximately 50 percent of the utilities located in the right-of-way are a result of highway construction work. Currently, the department pays 75 percent of the relocation costs. This bill would require the department to pay 50 percent of the relocation costs.
7. DOT estimates the savings from the percentage change to be approximately $1.3 million per year. Those savings will be used to fund other construction projects on Montana's highways.
8. An additional 0.50 FTE accountant will be needed in the General Operations Program to absorb the increased workload of this bill.

<u>FISCAL IMPACT:</u>

	FY 2004 Difference	FY 2005 Difference
Department of Transportation		
FTE	0.50	0.50
<u>Expenditures:</u>		
Personal Services	$11,121	$11,121
<u>Funding of Expenditures:</u>		
State Special Revenue (02)	$11,121	$11,121
<u>Revenues:</u>		
State Special Revenue (02 Highways)	$750,000	$750,000
Department of Natural Resources and Conservation		
<u>Revenues:</u>		
State Special Revenue (02 School I&I)	($5,000)	($5,000)
School Trusts (06)	($72,000)	($72,000)
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>		
State Special Revenue (02 School I&I)	($5,000)	($5,000)
State Special Revenue (02 Highways)	$738,879	$738,879
School Trusts (06)	($72,000)	($72,000)

<u>EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:</u>
Local governments would likely see increased revenue depending on the number of feet of utilities located on local government owned right-of-way.

<u>TECHNICAL NOTES:</u>
Department of Natural Resources and Conservation
1. Section 1 of the proposed legislation unconstitutionally limits the value of any utility easement on state trust lands to $1 per lineal foot, regardless of the width of the easement or the appraised value of the land. This may violate Section 11 of the State Enabling Act of February 22, 1889, 26 Stat. 676, as well as Article X,

Section 11 of the 1972 Montana Constitution, which both require that the state receive the full market value for the disposition of any interest in school trust lands.

2. In Montrust v. State of Montana, ex rel. Board of Land Commissioners, 296 Mont. 402, 989 P.2d 800 (1999), the Montana Supreme Court cited private trust law authority in striking down a number of statutes which violated the state's duty of undivided loyalty to the beneficiaries and which prevented the institutional trust beneficiaries from deriving the full benefit of revenue from trust lands. Portions of 77-1-130, MCA, were struck down by the district court in the Montrust case, precisely because the legislature had directed the State Board of Land Commissioners to sell certain easements at 1972 land values. The court held that the statute directly offended the state's constitutional and fiduciary duty to obtain the full market value for such easements.